IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.5048 of 1998

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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M.P. THAKRAR - Petitioner(s)
Versus
SENIOR DIVISIONAL MANAGER & 1 - Respondent(s)

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Appearance :
MR IS SUPEHIA for Petitioner(s) : 1,
MR AK CLERK for Respondent(s) : 1,
SERVED BY RPAD - (R) for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 07/07/2006
ORAL JUDGMENT

1. The short dispute in this petition under Article 226 of the Constitution is as to whether the penalty levied on the petitioner of reduction to four stages lower in the timescale as confirmed by the appellate authority is required to be quashed and set aside as prayed for.

2. The facts in brief : The petitioner, who is serving as Higher Grade Assistant with Life Insurance Corporation of India in Veraval Branch Office availed off Leave Travel Concession (LTC) advance on six different occasions. The petitioner did not undertake the proposed journey nor did he proceed on leave. On 14th March, 1996 a charge-sheet came to be issued in the aforesaid backdrop of facts that the petitioner had misused facility of LTC advance and by utilizing the monies so obtained, for his personal purposes, temporarily misappropriated the same. Inquiry officer appointed by the respondent-Corporation found the charges proved as per Report dated 21st August, 1997. The disciplinary authority concurred with the findings in the inquiry report and after giving opportunity to the petitioner imposed penalty of reduction to four stages lower in the timescale vide order dated 30th September, 1997. Exercising his right of appeal, the petitioner preferred appeal but did not succeed. The appellate authority vide order dated 15th May, 1998 confirmed the penalty imposed by the disciplinary authority.

3. The learned advocate for the petitioner submitted that the order made by the disciplinary authority was

required to be quashed and set aside for the simple reason that the explanation tendered by the petitioner had not been considered by the disciplinary authority. That except for referring to the reply given by the petitioner the grounds raised by the petitioner have not been dealt with by the disciplinary authority. The second contention was that instruction No.19 of Life Insurance Corporation of India (Leave Travel Concession) Instructions, 1994 (Instructions), which pertains to advances specifically provides that in case an employee does not refund the LTC advance within seven days after the advance drawn by the employee becomes due for refund as per clause (vi), the amount of advance so due for refund shall be recovered from the next pay bill of the employee. Thus, according to him, it could not be stated that the petitioner had committed any breach of any rules and regulations amounting to any misconduct calling for initiation of disciplinary proceedings. A further contention was raised that Regulation 39 of the Life Insurance Corporation of India (Staff) Regulations, 1960, which deals with penalties did not permit, in any event levy of penalty by way of reduction to more than one lower stage in timescale and the penalty imposed of

reduction to four lower stages in timescale was thus bad in law. In support of the submissions made the learned advocate placed reliance on the following decisions in the case of :

(i) A.L. Kalra Vs. Project & Equipment Corporation of India Ltd., 1984-II L.L.J. 186;

(ii) M/s. Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut & Ors., AIR 1984 SC 505;

(iii) Raj Kumar Mehrotra Vs. State of Bihar & Ors., (2005) 12 SCC 256;

(iv) Director (Marketing), Indian Oil Corporation Ltd. & Anr. Vs. Santosh Kumar, 2006 AIR SCW 2849;

(v) Unreported decision in case of G.H. Chakarverty Vs. State of Gujarat, rendered on 10.09.2003 in Special Civil Application No.499 of 1999 as confirmed by order dated 29.01.2005 made in Letters Patent Appeal No.50 of 2005; AND

(vi) Unreported decision in case of State of Gujarat Vs. Tushar C. Shah, rendered on 18.08.2005/21.10.2005 in Letters Patent Appeal No.1798 of 2004.

4. Responding to the submissions made the learned advocate for the respondent-Corporation submitted that the petitioner could not have any grievance and should not be heard to say that the reply was not considered by

the disciplinary authority because as can be seen from the last but one paragraph of the order of disciplinary authority the disciplinary authority has specifically stated that reply dated 29.09.1997 had been carefully considered. That even otherwise, against the said order appeal had been preferred and the final order was that of the appellate authority made on 15th May, 1998. The order of the disciplinary authority had merged in the order made by the appellate authority. In relation to the interpretation canvassed qua Regulation 39(1)(d) of the Regulations, it was submitted that if what the petitioner contended was to be accepted the word “immediately” had to be read as preceding the phrase “lower stage in a timescale”; alternatively, it was submitted that instead of using words “reduction to a lower stage” the words would have been “reduction by a lower stage”, and only then could the contention made on behalf of the petitioner be accepted. In support of the submissions reliance was placed on the decision in case of *Bharat Petroleum Corpn. Ltd. & Ors. Vs. T.K. Raju*, (2006) 3 SCC 143.

5. Having heard the learned counsel appearing for the respective parties it is apparent that in exercise of

jurisdiction under Article 226 of the Constitution the Court has very limited role to play while appreciating the punishment levied by the employer. The position of law is well settled that it is not open to the High Court to undertake re-appreciation of evidence if, on the same set of facts and circumstances and evidence, it is possible to arrive at the view adopted by the authority merely because the High Court feels that another view is possible in the matter. That the Court does not function as an appellate Court qua findings recorded by the domestic Court in the inquiry and the only circumstance in which the punishment can be interfered with is :- (i) when the punishment imposed by the domestic Court is shockingly disproportionate to the offence committed by the delinquent; (ii) when there is absence of good faith; (iii) when the facts and evidence suggest victimization or unfair labour practice; (iv) when the domestic inquiry has been conducted in violation of the principles of natural justice or is based upon a fundamental error; (v) when the materials available on record show that the finding of the domestic Court is without any basis or perverse. That normally awarding of proper punishment for the misconduct proved is the

function of the management and the Court would not sit in appeal qua the findings recorded by the domestic Court. Another factor which would permit the Court to interfere is in a case where it is found that the inquiry procedure is so perverted as to amount to no inquiry at all, but it is not open to the Court to substitute its own appraisal of evidence. While adjudging the severity or the adequacy of the punishment qua the nature of the offence committed Court cannot adopt any substantive standard but the same has to be considered from the view point of the management which is required to administer the establishment in accordance with its own rules of functioning. The concept of punishment being shockingly disproportionate only conveys that the punishment is totally irrational in the sense that it was in outrageous defiance of logic or moral standards.

6. Applying the aforesaid principles to the facts of the case it is not possible to accept the contention raised on behalf of the petitioner. None of the tests is satisfied so as to hold that the penalty imposed on the petitioner is shockingly disproportionate. The contention regarding the disciplinary authority having not considered the

reply of the petitioner also cannot be upheld once it is found in the order that the authority has categorically stated that the reply was considered. It is settled position in law that where the disciplinary authority accepts the findings recorded by the inquiry officer and concurs with the same, the authority need not repeat the same findings, the only caveat being that the order in question reflected such a position and application of mind. In the present case, the order of the disciplinary authority meets with the said requirement. Apart from this, it is apparent that the order of the disciplinary authority has merged with the order of the appellate authority and no grievance is made that the appellate authority has not heard or considered the petitioner. During course of hearing the learned advocate for the respondent-Corporation had also submitted that the ground regarding disciplinary authority not having considered the reply had never been raised before the appellate authority and this submission was not shown to be incorrect by the learned advocate for the petitioner.

7. In so far as the submission that because instruction No.19 permits the employer-Corporation to recover the

amount from the next pay bill of the employee it should be held that no default was committed by the petitioner does not merit acceptance The said provision is an enabling provision and from the same it cannot be contended, and if contended, cannot be accepted that the obligation of the employee to refund the amount of unutilized advance disappears. In fact, clause (vii) of Instruction No.19 only provides a mode of recovery and does not substitute the obligation cast upon the employee who had availed of the facility of advance.

8. Regulation 39(1) reads as under:-

> **“Penalties:**
> 39. (1) Without prejudice to the provisions of other regulations, [any one or more of] the following penalties for good and sufficient reasons, and as hereinafter provided, be imposed [by the disciplinary authority specified in Schedule I] on an employee who commits a breach of regulations of the Corporation, or who displays negligence, inefficiency or indolence or who knowingly does anything detrimental to the interest of the Corporation, or conflicting with the instructions or who commits a breach of discipline, or is guilty of any other act prejudicial to good conduct:-

(a) censure;

(b) withholding of one or more increments either permanently or for a specified period;

(c) recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Corporation by negligence or breach of orders;

(d) reduction to a lower service, or post, or to a lower time-scale, or to a lower stage in a time-scale;

(e) compulsory retirement;

(f) removal from service which shall not be a disqualification for future employment;

(g) dismissal."

Seven different kind of penalties are provided for an employee who commits a breach of regulations of the Corporation, or who displays negligence, inefficiency or indolence or who knowingly does anything detrimental to the interest of the Corporation, or conflicting with the instructions or who commits a breach of discipline, or is guilty of any other act prejudicial to good conduct.

Therefore, without entering into any further discussion, in as much as there is no dispute that the action of the petitioner was in conflict with the instructions, as to what should be the quantum of punishment cannot be scope of this petition. The contention that the reduction could be only by one stage in timescale does not merit acceptance. The use of the word “a” preceding the phrase “lower stage” does not mean that the penalty has to be restricted to only one lower stage. The word “a” also carries the meaning “any”, and considering the context in which the said word is used in clause (b) it is apparent that it denotes the term “any”. The said clause permits reduction to a lower service, or post, or to a lower timescale, or to a lower stage in a timescale. Therefore, it could be reduction to any lower service or post, or to any lower timescale, or to any lower stage in a timescale. As rightly contended on behalf of the respondent-Corporation on plain reading of the provision the penalty by way of reduction could be to any lower stage in a timescale viz. second, third or fourth stage in a timescale.

9. There being no dispute on facts that out of the six occasions when LTC advance was availed off by the

petitioner at list on three occasions the amount so refunded was beyond the period of seven days, even if the contention on the basis of clause (vii) of Instruction No.19 is taken into consideration, the petitioner has failed to fulfill his part of the obligation and thus commited a default which would amount to conflicting with the instructions.

10. In the circumstances, the petition does not merit acceptance and is, accordingly, rejected. Rule discharged. Interim relief stands vacated. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

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